absence of *mala fides*. *Walden* v. *Downing*, — Ga. App. —, 61 S. E. 1127, July 25, 1908. In a case involving constructive notice the court said: "To be a bona fide holder of negotiable paper one must take without knowledge of the facts or circumstances that would lead a prudent man to suspect that the paper is invalid as between antecedent parties." *Limerick National Bank* v. *Adams*, 70 Vt. 132; *Roth* v. *Colvin*, 32 Vt. 125. In the principal case, however, the invalidity contended for was between the immediate parties. "Reasonable cause to believe" might invalidate such a transaction as the principal case presents, but "reasonable cause to suspect" would not produce the same result. *Third National Bank of Columbus* v. *Poe*, supra; *Grant* v. *National Bank*, 97 U. S. 80.

BILLS AND NOTES—NON-EXISTING PAYEE—NEGOTIABLE INSTRUMENTS LAW. —A bookkeeper fraudulently procured a draft made payable to an existing partnership, and later, by endorsing the name of the partnership, he deposited the instrument with his private account in another bank. Upon suit it was claimed that the instrument was made payable to bearer—to a non-existing person. *Held*, that such a draft is made payable to bearer only in case the person procuring it to be made knows it to be payable to a fictitious person. *Seaboard Nat. Bank* v. *Bank of America* (1908), — N. Y. —. 85 N. E. 829.

The Negotiable Instruments Law provides that "the instrument is payable to bearer—when it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable." N. Y. Gen. Laws, c. 50, § 28. The same provision has been made generally in all of the states where the Negotiable Instruments Law has been enacted. The payee in the principal case was an existing person. But in this country the fictitiousness of the payee is determined by the intention of the drawer. *Shipman* v. *Bank*, 126 N. Y. 318; *Armstrong* v. *National Bank*, 46 Oh. St. 512; *Clutten* v. *Attenborough* (1895), 2 Q. B. 707. Different results are reached under the operation of the English Bills of Exchange Act. See English Bills of Exchange Act, § 7 (3). "The difference between the two statutes is important. The element of knowledge is the distinguishing feature. Under the English statute the paper is payable to bearer if the payee be a fictitious or non-existing person. Under the American statute paper payable to a fictitious person is not payable to bearer unless the maker or drawer knew that the payee was a fictitious or non-existing person. Under the English statute the fact governs; under the American statute the fact coupled with knowledge governs." BUNKER, NEGOTIABLE INSTRUMENTS, p. 50; *Vagliano* v. *Bank of England*, 23 Q. B. Div. 243.

CONSTITUTIONAL LAW—JURISDICTION OF FEDERAL COURTS—SUITS AGAINST A STATE.—The State Dispensary system which heretofore existed in the state of South Carolina was abolished by Session Laws. S. Car., 1907, No. 402. A commission, consisting of five members, was appointed by the Governor under the act to close out the business, sell the property, pay all debts and pay to the state treasurer all surplus funds after paying all liabilities. Appellees presented their claims to the commission for supplies furnished

the dispensary, but the commissioners refused to acknowledge them and suit was instituted thereon in the Federal Court. *Held,* that such commissioners were not officers of the state performing for it any functions of government and that this suit was not a suit against the state under the 11th Amendment. *Murray et al.* v. *Wilson Distilling Co.* (1908), — C. C. A., 4th Cir. —, 164 Fed. 1.

It is well settled that under the 11th Amendment no action can be maintained in any federal court by a citizen of one state against a state without its consent. *Cunningham* v. *Macon, etc., R. R.,* 109 U. S. 446; *Hans* v. *Louisiana,* 134 U. S. 1; *Pennoyer* v. *McConnaughy,* 140 U. S. 1. The decision of MARSHALL, J., in *Osborn* v. *Bank,* 9 Wheat. 738, holding that where jurisdiction depends on the party it is the party named in the record, is qualified by later decisions of the United States Supreme Court which hold that whether or not it comes within the prohibition of the 11th Amendment is not always determined by reference to the nominal parties in the record, as the court will look behind the nominal parties on the record to ascertain who are the real parties to the suit. *In re Ayers,* 123 U. S. 443; *Cunningham* v. *Macon, etc., R. R.,* 109 U. S. 446; *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana,* 108 U. S. 76; *Poindexter* v. *Greenhow,* 114 U. S. 270. Suits are forbidden when the suit is against the officers of the state as representing the state's action and liability, thus making it, though not a party to the record, the real party against whom the judgment will operate. *Louisiana* v. *Jumel,* 107 U. S. 711; *Hagood* v. *Southern,* 117 U. S. 52; *In re Ayers,* 123 U. S. 443. When, however, the suit is brought against the defendants, who claim to act as officers of the state and commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the state, such suit is allowable. *Osborn* v. *Bank,* 9 Wheat. 738; *Davis* v. *Gray,* 16 Wall. 203; *Poindexter* v. *Greenhow,* 114 U. S. 270; *Ex parte Young,* 209 U. S. 123. The 11th Amendment gives no immunity to officers or agents of a state in withholding the property of a citizen without authority of law, and the mere fact that defendants assert a right of possession in the state through its officers and agents is not enough. *Tindal* v. *Wesley,* 167 U. S. 204; *United States* v. *Lee,* 106 U. S. 196. The legislature in creating the commission did not confer upon them any powers in connection with the administration of the state's affairs, but simply made them holders or trustees of a special fund, intrusted to them for the payment of state debts. The legislature may create such a trust, PERRY, TRUSTS, § 30; *Commissioners of Sinking Fund* v. *Walker et al.,* 6 How. (Miss.) 143, and suit to enforce payment out of such fund is not a suit against the state.

CONTRACTS—AGREEMENT IN RESTRAINT OF TRADE IF SEVERABLE AND REASONABLE AS TO PART IS VALID.—Defendant, who was manager and owner of the controlling interest in a corporation having its principal place of business in Jersey City, sold his interest to the other members of the corporation and agreed not "to directly or indirectly engage in, promote or give name to any business of the same kind or character within five hundred